

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

**AARON MITCHELL; DAVID HEMPHILL;
BYRON CLAYBROOK; MICHAEL CARTER;
DONNY CURRUTH; JERRY PRUIT;
CORY PATTERSON; TODD BURROUGHS;**

Plaintiffs,

v.

**CITY OF NORTHPORT,
CHIEF OF NORTHPORT BART MARSHALL;**

And Defendant No. 1 whether Singular or plural,
Plaintiffs hereby intending to designate the actor(s)
Who committed the acts of race discrimination,
Harassment or retaliation that contributed to
Plaintiffs injuries on the occasion made the basis
of the suit. No. 2 whether singular or plural,
Plaintiff hereby intending to designate anyone in
the chain of command for the city of Northport
who knew or should have known of the
discrimination actions in a supervisor position
and neglected to enforce antidiscrimination
policies of the Northport fire department. No. 3
Any Northport Fire Employee, member of the
Civil Service Board, or member of the Mayor's
Office who failed to perform an adequate
Background investigation into the city of Northport
Fire Chief Bart Marshall. Plaintiff aver that the
Identities of those fictitious parties Defendant
Herein are otherwise unknown to the Plaintiff, their
Identities as proper parties Defendant are not
Known to the Plaintiff at the time and their true
names will be substituted by amendment when
ascertained,

Case No.:

Defendants.

)

DEFENDANTS' NOTICE OF REMOVAL

COME NOW Defendants City of Northport ("City") and Fire Chief of the City of Northport Fire Department Bart Marshall ("Chief" or "Marshall") (collectively "Defendants") and file this Notice of Removal, removing this cause to the United States District Court for the Northern District of Alabama, Southern Division. As grounds for removal, Defendants respectfully show unto the Court as follows:

1. This action shows that it was filed on or about September 26, 2018 in the Circuit Court of Tuscaloosa County, Alabama and is now pending in said Court as Case No. : CV-2018-901108. Neither Defendant City of Northport nor Defendant Marshall have been served. True and correct copies of the state court Complaint, the circuit court docket sheet in this action are attached hereto as Exhibits 1 and 2.

2. Instead, Defendant City of Northport was first notified of this action by a telephone call from the insurer in this case to City of Northport attorney Ron Davis on the morning of October 4, 2018 indicating that a lawsuit had been filed against the City of Northport in state court, but City Attorney Davis did not receive or see a copy of the lawsuit to be able to determine its claims (and therefore any issue about the ability to remove it to federal court) until shortly before 1:57 pm that day

(October 4, 2018) when he emailed a copy of it to the insurer for coverage.

3. Pursuant to 28 U.S.C. §1446(a), removal to this Court is proper because the Circuit Court of Tuscaloosa County is within the Northern District of Alabama, Western Division.

4. In compliance with 28 U.S.C. §1446(b), this Removal is filed within thirty (30) days after any defendant first received, through service or otherwise, a copy of the initial pleading setting forth Plaintiffs' claims for relief, again noting that neither Defendant City of Northport nor Defendant Marshall have been served in the case.

5. Pursuant to 28 U.S.C. §1446(b)(2)(A), all Defendants who have been properly named join and consent to the removal of this action.

6. Pursuant to 28 U.S.C. §1446(d) a copy of this Notice of Removal is being filed with the clerk of the Circuit Court of Tuscaloosa, Alabama. A copy of this Notice of Removal and the state court Notice of Filing of Removal are also being served upon counsel for Plaintiff.

7. This Court has original jurisdiction over this action under 28 U.S.C. §1331 as Plaintiffs' Complaint asserts claims that arise under federal law. This action is removable pursuant to 28 U.S.C. §1441(a) because Plaintiffs' Complaint asserts claims under Title VII of the Civil Rights Act of 1964, as amended, and Section 1981. This Court has original jurisdiction over Plaintiffs' Title VII claims as

well as those under Section 1981. 42 U.S.C. §2000(e)(5)(f)(3), and 42 U.S.C. §1981. One Plaintiff did file an EEOC charge on February 26, 2018, and the EEOC issued its Dismissal and Notice of Right to Sue on June 26, 2018. See Exhibits 3 and 4.

8. Plaintiffs also plead a claim of negligent hiring under Alabama state law against Defendants. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367(a). The state law claims in this action "derive from a common nucleus of operative fact," and thus, these state law claims form part of the same case or controversy under Article III of the United States Constitution. *United Mine Workers v. Gibbs*, 86 S. Ct. 1130, 1138 (1966). Here, the parties and the alleged events and injuries that form the basis of Plaintiffs' federal claims are directly linked to and identical to those that form the basis of Plaintiffs' state law claims.

9. As such, Defendants request that this Honorable Court exercise supplemental jurisdiction over Plaintiffs' state law claims.

WHEREFORE, PREMISES CONSIDERED, Defendants City of Northport and Defendant Chief Marshall pray that further proceedings in the Circuit Court of Tuscaloosa County, Alabama be discontinued and that this suit be removed to the United States District Court for the Northern District of Alabama.

RESPECTFULLY SUBMITTED this the 2nd day of November, 2018.

/S/ A. COURTNEY CROWDER

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to the following, or if not electronically served, I have mailed a copy of same via first class United States mail, postage prepaid, to the following:

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